

the websites owned by Plaintiffs and their musical artists. (Singh Depo., pp. 8, 9, 12, 13, 21, 98, 109)

(61) Martinez has unequivocally testified that Singh was responsible for the artwork on the packaging for the mixtape 'Are You A Window Shopper?' and would know if any other individuals were involved in this process. (Martinez Depo., pp. 63, 64, 65, 66, 67)

(62) Directly contradicting Martinez, Singh has flatly denied knowing anything about the process by which Mondesir and Plaintiff Jackson create and distribute mixtapes and their packaging. (Singh Depo., pp. 90, 91, 92, 93, 94)

(63) Since 2003, Mondesir has been an employee and representative of Plaintiff Jackson and his company Plaintiff G-Unit Records. (Odenat Depo. [5/3/11], p. 137) (Mondesir Depo., pp. 16, 17) (Jackson Depo., p. 110)

(64) Plaintiffs, through their representative Mondesir, have acknowledged that Defendant never authorized them to imprint the name of his website www.worldstarhiphop.com on their mixtape packaging. (Odenat Depo. [5/3/11], pp. 40, 41, 42, 49, 50) (Mondesir Depo., pp. 127, 128)

(65) Plaintiffs, through their representative Mondesir, have also acknowledged that, by imprinting www.worldstarhiphop.com on the packing of the mixtape 'Are You A Window Shopper', they wished to promote Defendant's website www.worldstarhiphop.com and they wished *to be* promoted by Defendant. (Mondesir Depo., pp. 123, 125, 127, 128)

(66) Upon being questioned as to why www.worldstarhiphop.com appeared on the packaging of the mixtape 'Are You A Window Shopper?', Mondesir stated that "I wanted the mixtape to get promoted on all those sites [www.worldstarhiphop.com]" (Mondesir Depo., p. 125)

(67) Upon asked if he “wanted Worldstarhiphop.com to promote this CD [‘Are You A Window Shopper?’] when it was released,” Mondesir responded: “Yes.” (Mondesir Depo., p. 128)

V. Mondesir Authorization: Jackson Image and ‘G-Unit’ Trademark

(68) From 1999 through around 2006, Mondesir and Defendant engaged in a business relationship, in which Mondesir provided Defendant with mixtapes for distribution. (Odenat Depo. [6/11/10], pp. 29, 86, 172, 173) (Mondesir Depo., pp. 93, 94, 96, 97, 98)

(69) Since around 2004 or 2005, Mondesir has been employed by Plaintiff Jackson to host a weekly radio show, known as ‘G-Unit Radio’, which is broadcast on Saturdays by Plaintiff Jackson’s radio channel, Shade 45, on Sirius Radio, as well as to serve as his exclusive disc jockey for every concert Plaintiff Jackson performs. (Mondesir Depo., pp. 50, 13, 14, 17, 20, 21, 105, 106) (Jackson Depo., pp. 53, 99, 100, 101, 102) (Martinez Depo., pp. 75, 76)

(70) Between 2005 and 2008, Martinez booked musical artists for Mondesir on his radio show ‘G-Unit Radio’. (Martinez Depo., pp. 26, 27, 28)

(71) On his radio show, ‘G-Unit Radio’, Mondesir has promoted all albums released by Plaintiffs. (Martinez Depo., p. 38)

(72) While on the air hosting his radio show and while creating mixtapes, Mondesir has often promoted Defendant’s website, www.worldstarhiphop.com, by giving it a ‘shout out’. (Odenat Depo [5/3/11], pp. 38, 39)

(73) Occasionally, Defendant has been in the Sirius Radio studio while Mondesir was hosting his radio show. (Martinez Depo., pp. 86, 87)

(74) At around the time Defendant launched www.worldstarhiphop.com in 2005, Mondesir expressly informed Defendant that, as part of Defendant's effort to promote Plaintiff Jackson and Mondesir's mixtapes, he was permitted to employ both the trademark 'G-Unit' and Plaintiff Jackson's image on the website. (Odenat Depo. [6/11/10], pp. 170, 171, 172) (Odenat Depo. [5/3/11], pp. 54, 55)

(75) When he was at Mondesir's house during Thanksgiving 2006, Defendant discussed with Mondesir the masthead containing the images of Plaintiff Jackson, Young Buck, Tony Yayo, Lloyd Banks and DJ Whoo Kid, which he had sent Mondesir via e-mail and which he was at that time considering using on the masthead of www.worldstarhiphop.com, and Mondesir granted him permission to use it on the website. (Odenat Depo. [5/3/11], pp. 73, 74)

(76) In around mid-2006, to assist Plaintiffs in their mixtape promotional efforts, Defendant made Plaintiff Jackson and Mondesir's mixtape series 'G-Unit Radio' available on www.worldstarhiphop.com for listening and downloading and displayed on the website the covers of the mixtapes in this series. (Odenat Depo. [6/11/10], p. 196)

(77) From around mid-2006 through April 2007, www.worldstarhiphop.com displayed the phrase 'G-Unit Radio' on a tab (button) at the top of the homepage and on a separate webpage beside each of the mixtapes in Plaintiffs' 'G-Unit Radio' mixtapes series which Defendant made available for listening and downloading. (Odenat Depo. [6/11/10] p. 191) (Odenat Dec., ¶13)

(78) At the time www.worldstarhiphop.com contained a webpage displaying Plaintiffs' 'G-Unit Radio' mixtape series, from around mid-2006 through April 2007, this webpage was *only* displayed and visible to a visitor to www.worldstarhiphop.com who clicked on the 'G-Unit Radio' tab at the top of the homepage and was redirected to the webpage

containing the 'G-Unit Radio' mixtape series. (Odenat Depo. [6/11/10], p. 193) (Odenat Depo., ¶¶13, 14, 15, 16)

(79) At the time www.worldstarhiphop.com made Plaintiffs' 'G-Unit Radio' series of mixtapes available for listening and downloading, in 2006 and early 2007, many other websites also made these mixtapes available and displayed a 'G-Unit Radio' tab. (Odenat Depo. [6/11/10], pp. 194, 195)

(80) In April 2007, Defendant ceased offering mixtapes for listening and downloading. (Odenat Depo. [6/11/10], pp. 146, 148)

(81) In January 2008, when www.worldstarhiphop.com began to display a masthead containing a drawing of a profile of Plaintiff Jackson along with a variety of other hip-hop artists, Mondesir expressly informed Defendant that he had permission to display Plaintiff Jackson's image on the website. (Odenat Depo. [5/3/11], pp. 54, 55)

(82) Defendant displayed the images of Plaintiff Jackson, as well as Mondesir and other artists associated with Plaintiffs, on the three (3) mastheads of www.worldstarhiphop.com for the purpose of promoting Plaintiffs, but *not* for the purpose of promoting the website www.worldstarhiphop.com. (Odenat Depo. [6/11/10], pp. 57, 59, 60, 70, 86, 118, 119)

VI. Jackson/Odenat: Meeting and Aftermath

(83) In October 2008, Defendant traveled to New York to discuss the possible sale of www.worldstarhiphop.com to 'Puff Daddy' (also known as 'P Diddy'), a hip-hop artist and businessman. (Odenat Depo. [6/11/10], pp. 52, 53, 95, 96) (Mondesir Depo., pp. 63, 64)

(84) When he heard Defendant was in New York to meet with 'Puff Daddy', a rival, Plaintiff Jackson, through a representative, requested Defendant to meet with him at his offices to discuss the possibility of him purchasing Defendant's website www.worldstarhiphop.com. (Odenat Depo. [6/11/10], pp. 51, 52, 97, 98, 99) (Mondesir Depo., pp. 65, 66, 67, 68)

(85) Defendant believes that one of the reasons Plaintiff Jackson was interested in purchasing www.worldstarhiphop.com at this time was to prevent his rival, 'Puff Daddy', from purchasing it. (Odenat Depo. [6/11/10], p. 98)

(86) During this meeting, Plaintiff Jackson informed Defendant that he had visited www.worldstarhiphop.com often, he "loved" the website, he had seen his image on the masthead of the website many times, he was "very happy" with it being there and "love[d] the image," and he expressly instructed Defendant *not* to remove it. (Odenat Depo. [6/11/10], pp. 49, 50, 173, 174)

(87) Although he had visited www.worldstarhiphop.com and seen his image on the website many times, Plaintiff Jackson has admitted that he did not express, at his meeting with Defendant or thereafter, any unhappiness with Defendant over Defendant's use of his image, or instruct Defendant to remove it, from the website. (Odenat Depo. [6/11/10], pp. 53, 54) (Jackson Depo., pp. 123, 160, 163)

(88) Plaintiff Jackson has acknowledged that he saw his image on www.worldstarhiphop.com as early as 2007, when www.worldstarhiphop.com displayed its masthead containing the images of Plaintiff Jackson, Young Buck, Tony Yayo, Lloyd Banks and DJ Whoo Kid. (Jackson Depo., pp. 76, 77)

(89) Since 2005, Sharon Salamone ("Salamone") has been employed by Plaintiffs to perform budgeting and human resources tasks and to sell advertising. (Salamone Depo., pp. 7, 9, 10)

(90) In late 2007 and early 2008, Salamone also viewed www.worldstarhiphop.com and saw the masthead displayed on its homepage containing a drawing of a profile of Plaintiff Jackson along with other hip-hop artists, and so informed Nicki Martin, Plaintiff G-Unit Records' Vice President of Operations, who noted Salamone's comment, but took no action. (Salamone Depo., pp. 24, 44, 45, 46)

(91) Mondesir has testified that he was present for part of the meeting between Plaintiff Jackson and Defendant, in October 2008, but was not privy to their complete conversation. (Mondesir Depo., pp. 129, 130)

(92) Notwithstanding Mondesir's clear testimony, Plaintiff Jackson has denied that Mondesir was present at the meeting at all, claiming that only one other individual, Nelson Gomez, was present. (Jackson Depo., pp. 161, 162)

(93) After the meeting, Plaintiff Jackson and Defendant began to frequently send each other text messages, until March 2009, when Plaintiffs suddenly wrote Defendant a cease and desist letter demanding that he remove Plaintiff Jackson's image from the masthead of www.worldstarhiphop.com. (Odenat Depo. [6/11/10], pp. 99, 100, 103, 104) (Zarin Dec., Exh. J)

(94) Immediately upon receiving Plaintiffs' cease and desist letter, Defendant removed the masthead then on the website which contained a drawing of the profile of Plaintiff Jackson along with other hip-hop artists. (Odenat Depo. [6/11/10], pp. 22, 23)

(95) Shortly before writing their cease and desist letter to Defendant, in early 2009, Plaintiff Jackson personally requested Defendant to post on www.worldstarhiphop.com a video of himself. (Odenat Depo. [6/11/10], pp. 100, 101)

(96) Although Defendant and Plaintiff Jackson verbally agreed that Defendant would post the video in exchange for the exclusive right to do so, Plaintiff Jackson shortly thereafter posted this video on another website, Youtube.com, without providing www.worldstarhiphop.com credit by imprinting its name on the video. (Odenat Depo. [6/11/10], pp. 100, 101, 102)

(97) Defendant expressed his dissatisfaction to Plaintiff Jackson over his breach of their oral agreement, which led to a rapid deterioration of their relationship, Plaintiffs' March 2009 cease and desist letter and Plaintiffs' subsequent filing of this action. (Odenat Depo. [6/11/10], pp. 100, 101, 102)

(98) As a consequence of Plaintiffs' lawsuit against him, Defendant and www.worldstarhiphop.com have received negative publicity and been forced to spend large sums of money to defend against Plaintiffs' unfounded claims. (Odenat Dec., ¶22)

VII. Thisis50.com: History

(99) In 2007, upon viewing and admiring Defendant's website, www.worldstarhiphop.com, Plaintiff Jackson first became interested in developing a website. (Jackson Depo., pp. 121, 122)

(100) In September 2007, Plaintiffs launched a fan website under the domain name www.thisis50.com, devoted exclusively to Plaintiff G-Unit and Plaintiff Jackson and his music. (Jackson Depo., p. 131) (Singh Depo., p. 22)

(101) Singh designed and is responsible for maintaining the website www.thisis50.com. (Singh Depo., pp. 22, 23, 24)

(102) Before he launched his website www.thisis50.com, in September 2007, Plaintiff Jackson was well known as a hip-hop artist and the purveyor of the 'G-Unit' clothing line, but *not* as the owner and operator of a website about himself or hip-hop culture. (Jackson Dec., ¶¶5, 11, 12)

(103) In the fall of 2009, Plaintiffs altered the focus and format of their website, www.thisis50.com, from a fan website, dedicated to only Plaintiff G-Unit and Plaintiff Jackson, to a website devoted to hip-hop culture and entertainment in general, similar to www.worldstarhiphop.com, a component of which is displaying videos of hip-hop personalities and culture. (Jackson Depo., pp. 132, 133, 134)

(104) Visitors to www.thisis50.com may sign up to be 'members', a status which allows them, unlike non-member visitors, to create a profile and upload content, such as comments, video clips and photographs, to the website. (Singh Depo., pp. 24, 25)

(105) Plaintiffs' staff polices the content uploaded by members to ensure that it does not contain pornography, poor behavior, foul language or racist comments, and removes any such material. (Singh Depo., pp. 25, 26, 27) (Salamone Depo., pp. 26, 27, 28, 29, 30)

(106) In its current format, www.thisis50.com's content is composed of videos of interviews with celebrities and musical artists conducted by Plaintiffs' staff, music videos by artists who Plaintiffs wish to promote, and blogs, which may include comments, photographs and video clips, posted by individual members of the website. (Singh Depo., pp. 24, 27, 28, 29, 30, 31) (Salamone Depo., pp. 25, 26)

(107) According to Plaintiff Jackson, www.thisis50.com, receives approximately thirty (30) million unique visitors per month. (Jackson Depo., pp. 132, 135)

VIII. Thisis50.com: Revenue

(108) From the time of its inception, in September 2007, until the current time, visitors to www.thisis50.com have been able to view the website free of charge. (Jackson Depo., p. 132) (Singh Depo., p. 71)

(109) For approximately the first year of its operation, from September 2007 until around the summer of 2008, www.thisis50.com did not accept, or derive any revenue from, advertising. (Singh Depo., p. 72)

(110) Plaintiffs' website, www.thisis50.com, currently derives revenue from corporate advertising, in the form of 'takeovers' of the website as well as traditional advertising, in addition to the sale of hip-hop related merchandise. (Jackson Depo., pp. 133, 134, 135, 136, 165, 166) (Singh Depo., pp. 33, 34, 71)

(111) Plaintiffs' website, www.thisis50.com, does not accept advertising which is pornographic in nature or which is, in Plaintiffs' judgment, not reputable. (Singh Depo., pp. 36, 37) (Salamone Depo., pp. 12, 13, 14, 15)

(112) As Plaintiff Jackson has acknowledged, Plaintiffs' corporate advertisers differ from Defendant's corporate advertisers, because Defendant's website, www.worldstarhiphop.com, displays sexually suggestive material, which deters many corporate advertisers, who advertise on Plaintiffs' website. (Jackson Depo., pp. 138, 139, 140, 166, 167)

IX. Worldstarhiphop.com: Shut Down

(113) On January 24, 2011, a couple of weeks before a scheduled settlement conference in this action, Defendant's website www.worldstarhiphop.com was shut down by an unknown source. (Dwyer Dec., ¶¶5-10)

(114) By his own admission, Plaintiff Jackson caused this shut down in an effort to coerce Defendant to concede to his demands at the upcoming settlement conference. (Zarin Dec., Exh. K, L)

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